

SENATE BILL 676

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2003 Regular Session  
3lr2428  
CF HB 363

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By: **Senator Gladden**  
Introduced and read first time: February 13, 2003  
Assigned to: Rules  
Re-referred to: Finance and Budget and Taxation, February 20, 2003

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: April 2, 2003

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland Medical Assistance Program - Maryland Pharmacy Access Hotline**  
3 **Prior Authorization - Mental Health Drugs**

4 FOR the purpose of ~~prohibiting the Department of Health and Mental Hygiene from~~  
5 ~~establishing, within certain pharmacy assistance programs in the Maryland~~  
6 ~~Medical Assistance Program, prior authorization requirements or restrictions on~~  
7 ~~coverage for certain drugs used to treat mental illness and brain disorders;~~  
8 ~~providing for the application of this Act; requiring the Department to consider~~  
9 ~~the implementation of certain programs on psychiatric drug costs; making~~  
10 ~~certain stylistic changes; and generally relating to the Maryland Medical~~  
11 ~~Assistance Program and drugs for mental illness and brain disorders. requiring~~  
12 ~~the Department of Health and Mental Hygiene to establish a certain hotline;~~  
13 ~~requiring the Department to distribute to Program recipients certain~~  
14 ~~information about the hotline; requiring the Department to notify certain health~~  
15 ~~care providers about the hotline; requiring the Department to develop a~~  
16 ~~methodology to track the number and type of calls received by the hotline;~~  
17 ~~requiring the Department to report quarterly to the Pharmacy and Therapeutics~~  
18 ~~Committee on the number and type of calls received by the hotline; and~~  
19 ~~generally relating to the Maryland Medical Assistance Program and the~~  
20 ~~Maryland Pharmacy Access Hotline.~~

21 BY adding to  
22 Article - Health - General  
23 Section 15-136  
24 Annotated Code of Maryland  
25 (2000 Replacement Volume and 2002 Supplement)

1 ~~BY repealing and reenacting, without amendments,~~  
2 ~~Article Health General~~  
3 ~~Section 15-101(a) and (i)~~  
4 ~~Annotated Code of Maryland~~  
5 ~~(2000 Replacement Volume and 2002 Supplement)~~

6 ~~BY adding to~~  
7 ~~Article Health General~~  
8 ~~Section 15-118.1~~  
9 ~~Annotated Code of Maryland~~  
10 ~~(2000 Replacement Volume and 2002 Supplement)~~

11 ~~BY repealing and reenacting, with amendments,~~  
12 ~~Article Health General~~  
13 ~~Section 15-124 and 15-124.1~~  
14 ~~Annotated Code of Maryland~~  
15 ~~(2000 Replacement Volume and 2002 Supplement)~~

16 **Preamble**

17 ~~WHEREAS, Unrestricted access to psychiatric medications is critical to the~~  
18 ~~successful treatment of mental illnesses and brain disorders; and~~

19 ~~WHEREAS, The implementation of preferred drug lists, formularies, and prior~~  
20 ~~authorization programs in other states has been documented to result in a~~  
21 ~~deterioration of patient care and increased psychiatric hospitalization; and~~

22 ~~WHEREAS, A cost containment program that results in increased~~  
23 ~~hospitalization will not save money for the State of Maryland but simply transfer~~  
24 ~~costs to other areas of the State budget; and~~

25 ~~WHEREAS, The human costs of restricting access to psychiatric medications~~  
26 ~~far exceed the potential financial savings to the State of Maryland; and~~

27 ~~WHEREAS, Legislation introduced during the 2002 Session of the Maryland~~  
28 ~~General Assembly prohibiting the Department of Health and Mental Hygiene from~~  
29 ~~establishing prior authorization requirements or restricting coverage for medications~~  
30 ~~used to treat mental illnesses and brain disorders in the Maryland Medical Assistance~~  
31 ~~Program passed the Maryland House of Delegates and the Senate of Maryland; now,~~  
32 ~~therefore;~~

33 **SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF**  
34 **MARYLAND, That the Laws of Maryland read as follows:**

## Article - Health - General

1  
2 ~~15-101.~~

3 (a) ~~In this title the following words have the meanings indicated:~~

4 (i) ~~"Program" means the Maryland Medical Assistance Program.~~

5 ~~15-118.1.~~

6 (A) (1) ~~THIS SECTION DOES NOT APPLY TO DRUGS COVERED BY MANAGED~~  
7 ~~CARE ORGANIZATIONS UNDER § 15-103 OF THIS SUBTITLE.~~

8 (2) ~~THIS SECTION APPLIES TO THE MARYLAND PHARMACY ASSISTANCE~~  
9 ~~PROGRAM DEVELOPED UNDER § 15-124 OF THIS SUBTITLE, THE MARYLAND~~  
10 ~~PHARMACY DISCOUNT PROGRAM DEVELOPED UNDER § 15-124.1 OF THIS SUBTITLE,~~  
11 ~~AND ANY OTHER PHARMACY ASSISTANCE PROGRAM DEVELOPED BY THE~~  
12 ~~DEPARTMENT.~~

13 (B) ~~THE DEPARTMENT MAY NOT ESTABLISH PRIOR AUTHORIZATION~~  
14 ~~REQUIREMENTS OR RESTRICT COVERAGE FOR DRUGS USED TO TREAT MENTAL~~  
15 ~~ILLNESS AND BRAIN DISORDERS, INCLUDING:~~

16 (1) ~~ATYPICAL ANTIPSYCHOTIC MEDICATIONS;~~

17 (2) ~~CONVENTIONAL ANTIPSYCHOTIC MEDICATIONS;~~

18 (3) ~~ACTIVE SEROTONIN RE-UPTAKE INHIBITORS;~~

19 (4) ~~ATYPICAL ANTIDEPRESSANTS; AND~~

20 (5) ~~DRUGS TO TREAT EPILEPSY AND OTHER CENTRAL NERVOUS SYSTEM~~  
21 ~~BRAIN DISORDERS.~~

22 (C) ~~THE DEPARTMENT SHALL CONSIDER:~~

23 (1) ~~IMPLEMENTATION OF A QUALITY IMPROVEMENT PROGRAM ON~~  
24 ~~PSYCHIATRIC DRUG COSTS THAT ADDRESSES POLYPHARMACY AND PRESCRIBING~~  
25 ~~PATTERNS; AND~~

26 (2) ~~PHYSICIAN EDUCATION INITIATIVES ON PSYCHIATRIC DRUG COSTS,~~  
27 ~~INCLUDING AN ANNUAL CIRCULATION OF A DRUG PRICING LIST TO PHYSICIANS~~  
28 ~~PARTICIPATING IN THE PROGRAM.~~

29 ~~15-124.~~

30 (a) (1) ~~The Department shall maintain a Maryland Pharmacy Assistance~~  
31 ~~Program for low income individuals whose:~~

1 (i) Assets are not more than 1.5 times the amount of accountable  
 2 resources according to the asset schedule of the Maryland Medical Assistance  
 3 Program; and

4 (ii) Gross annual income does not exceed:

5 1. \$4,600 plus \$500 for each individual over 1 in a family  
 6 unit; and

7 2. An annual increase set by the Secretary under paragraph  
 8 (2)(i)4 of this subsection.

9 (2) (i) 1. In this paragraph the following words have the meanings  
 10 indicated:

11 2. "Income disregard" means the exclusion of up to \$1,000 of  
 12 annual income earned by an individual as a client of a sheltered workshop if the  
 13 individual's sole other income is derived from a Social Security payment.

14 3. "Sheltered workshop" means a workshop licensed by the  
 15 Developmental Disabilities Administration under Title 7, Subtitle 9 of this article.

16 (ii) For the purpose of paragraph (1) of this subsection, the  
 17 Secretary shall:

18 1. In order to determine eligibility for the Maryland  
 19 Pharmacy Assistance Program, deduct any income disregards from the countable  
 20 gross income of a unit that contains a disabled individual;

21 2. Define excluded assets;

22 3. Establish a family unit structure; and

23 4. Beginning July 1, 1985, increase annually at the time  
 24 Social Security benefits are increased, rounded to the next highest even \$50 level, the  
 25 income level within which an individual is eligible for benefits under the Maryland  
 26 Pharmacy Assistance Program by the larger of:

27 A. The percentage by which benefits under Title II of the  
 28 Social Security Act (42 U.S.C. 401-433) are increased by the federal government due  
 29 to cost of living changes as that percentage is reported in the Federal Register  
 30 pursuant to 42 U.S.C. 415(I)(2)(D) but not to exceed 8 percent; or

31 B. The dollar amount by which the medical assistance income  
 32 schedules are increased by the State.

33 (b) (1) (i) Reimbursement under the Maryland Pharmacy Assistance  
 34 Program may be limited to maintenance drugs, anti-infectives, and AZT as specified  
 35 in regulations to be issued by the Secretary after consultation with the Maryland  
 36 Pharmacists Association.

1                   (ii)    1.    For any drug on the Program's interchangeable drug list,  
2 the Program shall reimburse providers in an amount not more than it would  
3 reimburse for the drug's generic equivalent, unless the individual's physician states,  
4 in his or her own handwriting, on the face of the prescription, that a specific brand is  
5 "medically necessary" for the particular patient.

6                               2.    If an appropriate generic drug is not generally available,  
7 the Department may waive the reimbursement requirement under  
8 sub-subparagraph 1 of this subparagraph.

9                   (2)    The reimbursement shall be up to the amount paid for the same  
10 items or services under the pharmacy program of the Maryland Medical Assistance  
11 Program and shall be subject to a copayment of not more than \$5.00 for each covered  
12 item or service.

13           (e)    (1)    Except as provided under paragraph (4) of this subsection and unless  
14 the change is made by an emergency regulation, the Maryland Pharmacy Assistance  
15 Program shall notify all pharmacies under contract with the Program in writing of  
16 changes in the Pharmaceutical Benefit Program rules or requirements at least 30  
17 days before the change is effective.

18                   (2)    Changes that require 30 days' advance written notice under  
19 paragraph (1) of this subsection are:

20                               (i)    Exclusion of coverage for classes of drugs as specified by  
21 contract;

22                               (ii)   Changes in prior or preauthorization procedures; and

23                               (iii)   Selection of new prescription claims processors.

24                   (3)    If the Maryland Pharmacy Assistance Program fails to provide  
25 advance notice as required under paragraph (1) of this subsection, it shall honor and  
26 pay in full any claim under the Program rules or requirements that existed before the  
27 change for 30 days after the postmarked date of the notice.

28                   (4)    Notwithstanding any other provision of law, the notice requirements  
29 of this subsection do not apply to the addition of new generic drugs authorized under  
30 § 12-504 of the Health Occupations Article.

31           (d)    (1)    The Secretary shall adopt rules and regulations that authorize the  
32 denial, restriction, or termination of eligibility for recipients who have abused  
33 benefits under the Maryland Pharmacy Assistance Program.

34                   (2)    As a condition of participation, the Department may require  
35 Maryland Pharmacy Assistance Program participants to apply for eligibility in the  
36 Maryland Medical Assistance Program within 60 days of notification to do so by the  
37 Department.

1           (3)     The rules and regulations shall require that the recipient be given  
2 notice and an opportunity for a hearing before eligibility may be denied, restricted, or  
3 terminated under this subsection.

4     ~~(E)     PRIOR AUTHORIZATION PROCEDURES OR RESTRICTIONS ON COVERAGE~~  
5 ~~DEVELOPED FOR THE MARYLAND PHARMACY ASSISTANCE PROGRAM SHALL BE~~  
6 ~~DEVELOPED IN ACCORDANCE WITH § 15-118.1 OF THIS SUBTITLE.~~

7     ~~[(e)]     (F)     The Secretary shall develop a program, in consultation with~~  
8 ~~appropriate agencies, that will provide information to ineligible Maryland Pharmacy~~  
9 ~~Assistance Program applicants regarding other programs that they may be eligible~~  
10 ~~for including the Maryland Medbank Program established under § 15-124.2 of this~~  
11 ~~subtitle and the short term prescription drug subsidy plan established under Subtitle~~  
12 ~~6 of this title.~~

13 ~~15-124.1.~~

14     (a)     (1)     In this section the following words have the meanings indicated:

15           (2)     ~~"Enrollee" means an individual who is enrolled in the Maryland~~  
16 ~~Pharmacy Discount Program.~~

17           (3)     ~~"Program" means the Maryland Pharmacy Discount Program~~  
18 ~~established under this section.~~

19     (b)     There is a Maryland Pharmacy Discount Program within the Maryland  
20 Medical Assistance Program.

21     (c)     The purpose of the Program is to improve the health status of Medicare  
22 beneficiaries who lack prescription drug coverage by providing access to lower cost,  
23 medically necessary, prescription drugs.

24     (d)     The Program shall be administered and operated by the Department as  
25 permitted by federal law or waiver.

26     (e)     (1)     The Program shall be open to Medicare beneficiaries who lack other  
27 public or private prescription drug coverage.

28           (2)     Notwithstanding paragraph (1) of this subsection, enrollment in the  
29 Maryland Medbank Program established under § 15-124.2 of this subtitle or the  
30 Maryland Pharmacy Assistance Program established under § 15-124 of this subtitle  
31 does not disqualify an individual from being eligible for the Program.

32     (f)     (1)     Subject to subsection (g) of this section, an enrollee may purchase  
33 medically necessary prescription drugs that are covered under the Maryland Medical  
34 Assistance Program from any pharmacy that participates in the Maryland Medical  
35 Assistance Program at a price that is based on the price paid by the Maryland  
36 Medical Assistance Program, minus the aggregate value of any federally mandated  
37 manufacturers' rebates.

1           (2)     Subject to subsection (g) of this section, and to the extent authorized  
 2 under federal waiver, an enrollee whose annual household income is at or below 175  
 3 [percent] % of the federal poverty guidelines may receive a discount subsidized by the  
 4 Department that is equal to 35 [percent] % of the price paid by the Maryland Medical  
 5 Assistance Program for each medically necessary prescription drug purchased under  
 6 the Program.

7           (g)     The Department may establish mechanisms to:

8           (1)     Recover the administrative costs of the Program;

9           (2)     Reimburse participating pharmacies in an amount equal to the  
 10 Maryland Medical Assistance price, minus the copayment paid by the enrollee for  
 11 each prescription filled under the Program; and

12          (3)     Allow participating pharmacies to collect a \$1 processing fee, in  
 13 addition to any authorized dispensing fee, for each prescription filled for an enrollee  
 14 under the Program.

15          (H)     ~~PRIOR AUTHORIZATION PROCEDURES OR RESTRICTIONS ON COVERAGE~~  
 16 ~~DEVELOPED FOR THE PROGRAM SHALL BE DEVELOPED IN ACCORDANCE WITH §~~  
 17 ~~15-118.1 OF THIS SUBTITLE.~~

18          ~~(h)~~   (4)     The Secretary shall adopt regulations to implement the Program.

19 15-136.

20          (A)     THE DEPARTMENT SHALL USE EXISTING RESOURCES TO ESTABLISH A  
 21 TOLL FREE MARYLAND PHARMACY ACCESS HOTLINE THAT:

22               (1)     OPERATES DURING REGULAR BUSINESS HOURS; AND

23               (2)     DURING NONBUSINESS HOURS ALLOWS CALLERS TO LEAVE A  
 24 MESSAGE.

25          (B)     (1)     THE DEPARTMENT SHALL DISTRIBUTE TO ALL PROGRAM  
 26 RECIPIENTS INFORMATION ABOUT THE MARYLAND PHARMACY ACCESS HOTLINE.

27               (2)     THE INFORMATION SHALL STATE CLEARLY IN EASILY READABLE  
 28 PRINT:

29                       (I)     THE TOLL FREE TELEPHONE NUMBER OF THE HOTLINE; AND

30                       (II)    THAT THE PROGRAM RECIPIENT SHOULD CALL THE  
 31 TELEPHONE NUMBER IF THE PROGRAM RECIPIENT IS HAVING PROBLEMS GETTING  
 32 NECESSARY MEDICINES.

33          (C)     THE DEPARTMENT SHALL NOTIFY ALL HEALTH CARE PROVIDERS WHO  
 34 PARTICIPATE IN THE PROGRAM ABOUT THE MARYLAND PHARMACY ACCESS  
 35 HOTLINE.

1     (D)     THE DEPARTMENT SHALL:

2             (1)     DEVELOP A METHODOLOGY TO TRACK THE NUMBER AND TYPE OF  
3 CALLS RECEIVED BY THE MARYLAND PHARMACY ACCESS HOTLINE; AND

4             (2)     PROVIDE A QUARTERLY REPORT TO THE PHARMACY AND  
5 THERAPEUTICS COMMITTEE THAT SUMMARIZES THE NUMBER AND TYPE OF CALLS  
6 RECEIVED BY THE MARYLAND PHARMACY ACCESS HOTLINE.

7     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
8 effect October 1, 2003.